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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

DIEGO PADILLA,  
Petitioner,  
vs.  
STATE OF NEVADA, *et al.*.  
Respondents.

Case No. 2:16-cv-00839-JCM-NJK

## ORDER

This action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 by a Nevada state prisoner. Neither a filing fee nor an application to proceed *in forma pauperis* was submitted with the petition. When filing a habeas action, petitioner must either submit the \$5.00 filing fee for habeas petitions or an application to proceed *in forma pauperis*. Due to the lack of an *in forma pauperis* application or filing fee, the present action will be dismissed without prejudice to the filing of a new petition in a new action with an *in forma pauperis* application with all required attachments. It does not appear from the papers presented that a dismissal without prejudice would result in a promptly-filed new petition being untimely. In this regard, petitioner at all times remains responsible for calculating the running of the limitations period as applied to his case and properly commencing a timely-filed habeas corpus action.

**IT THEREFORE IS ORDERED** that this action is **DISMISSED** without prejudice to the filing of **a new petition in a new action**.

1           **IT IS FURTHER ORDERED** that the Clerk of the Court shall send petitioner two copies  
2 of an *informa pauperis* application form for a prisoner, one copy of the instructions for the same,  
3 two copies of a blank 28 U.S.C. § 2254 habeas petition form, and one copy of instructions for the  
4 same.

5           **IT IS FURTHER ORDERED** that petitioner may file a new petition in a new action, but he  
6 may not file further documents in this action.

7           **IT IS FURTHER ORDERED** that a certificate of appealability is **DENIED**. Reasonable  
8 jurists would not find the dismissal of the improperly-commenced action without prejudice to be  
9 debatable or wrong.

10           **IT IS FURTHER ORDERED** that the Clerk of the Court shall enter judgment accordingly.  
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12           Dated April 22, 2016.

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15           UNITED STATES DISTRICT JUDGE

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